

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 238 of 1986

with

SPECIAL CIVIL APPLICATION No 1284 of 1986

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

=====

1. Whether Reporters of Local Papers may be allowed to see the judgements?

2. To be referred to the Reporter or not?

3. Whether Their Lordships wish to see the fair copy of the judgement?

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge?

RADHA KISHAN CEMENTS LTD.

Versus

STATE OF GUJARAT

Appearance:

(In both SCAs)

MR SA MEHTA for Petitioners

MR ND GOHIL for Respondent

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 15/10/96

ORAL JUDGMENT

Heard learned counsel for the parties. The learned counsel for the petitioners made a statement before this Court that the petitioner No.1-Company is a sick industry and BIFR has already recommended to this Court for winding thereof and the said matter is pending

before this Court. The learned counsel for the petitioners further admits that similarly factory of petitioner No.1 is also not in operation.

2. The petitioner, in Special Civil Application No.238 of 1986 has challenged the communication dated 2.1.86, annexure 'F', under which the petitioner was directed to hand over possession of lease area of Survey No.123/2/Part (East side), village Mankadchampa and Survey No.40/Part (East side), village Dhagadia, to the Range Forest Officer within 15 days from receipt of the said notice. The lease has been sanctioned for the aforesaid lands for Minor Mineral Limestone under the order dated 24th July 1980. It is not in dispute that the agreement of lease has been executed of these areas by the petitioner in the month of August 1982 and possession of said area has been given in the year 1983.

3. The Chief Conservator of Forest, G.S., Baroda, has not agreed to release the aforesaid lands in favour of the petitioners. Inspite of disagreement of the Forest Department, the Government of Gujarat in the IMPD had issued administrative orders agreeing to the grant of mining lease under two separate orders both dated 24.7.80 for each village. The Chief Conservator of Forests, G.S. Vadodara had registered his protest both with the Agriculture, Forests and Co-operative Department, Industries, Mines and Power Department, under his letter dated 28.8.80, but inspite of the protest the Government in the IMPD issued corrigenda dated 15.11.80 and 29.12.80 altering the extent of the area in both the villages. It is not in dispute that on 25.10.80, the Forest Conservation Ordinance, 1980 came into force which made it obligatory for the State Government to obtain prior approval of the Central Government before diverting any forest area for non-forest purpose. In view of Section 2 of the Forest (Conservation) Act, 1980, without prior approval of the Central Government, the State Government could not have sanctioned the mining lease of Limestone in favour of the petitioner. The Chief Conservator of Forests, G.S. Vadodara, has brought this legal position to the notice of the Government in the Industry and Mines Department that the mining lease as well as possession of the area has been given in contravention of the provisions of the Forest (Conservation) Act, 1980. The mining lease has been granted in the name of petitioner No.2 and is sought to be transferred in the name of petitioner No.1. Even this transfer was not made, the petitioner No.1-Company started mining operation.

4. In view of these facts, I do not find any illegality in the order challenged in this Special Civil

Application. However, in the reply to this Special Civil Application, the respondents have made it clear that it has no objection if the petitioner-Company carried out mining operations outside the limits of forest area i.e. in 16.30.75 hectares (about 40 acres) of revenue lands which were incorporated in the lease agreement. The respondent-Forest Department could not have permitted the petitioners and rightly so, to operate the mining operations in the forest areas till such time as the Government of India approved for release of forest land, which is not done in the present case. If any interference is made by this Court in the order impugned in this Special Civil Application, then this Court will allow the petitioners to operate mining operations contrary to the provisions of the Forest (Conservation) Act 1980. Otherwise also, the petitioner No.1-Compani is a sick Company and BIFR has already recommended for its winding up. Taking into consideration the totality of the facts of the case, no interference is called for to orders impugned in the Special Civil Application No.238 of 1986, and the same is therefore dismissed. Rule discharged. Ad-interim relief, if any, granted by this Court stands vacated.

5. So far as the Special Civil Application No.1248 of 1986 is concerned, prayer has been made for directions to the respondents to hand over possession of the lands admeasuring 22.2478 hectares of Survey No.123 of village Makadchampa, Taluka Danta, District Banaskantha, to the petitioners. This petition is ordered to be heard alongwith Special Civil Application No.238 of 1986. The prayer made in this Special Civil Application cannot be accepted as the petitioners have no right to do mining operations in the said area until approval has been given by the Central Government, under the provisions of the forest (Conservation) Act 1980. It is not case of the petitioners that any approval has been given in respect of the land in dispute in favour of the petitioners by the Central Government under the aforesaid Act. In view of this fact, this Special Civil Application also fails and the same is dismissed. Rule discharged. No order as to costs.

.....

(sunil)